

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ESTEBAN CAMPOS,

Petitioner,

v.

EDWARD BORLA,¹

Respondent.

No. 2:23-cv-1308 KJM CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner is a California prisoner proceeding pro se with a petition for writ of habeas corpus under 28 U.S.C. § 2254. This action proceeds on the amended petition filed September 18, 2023. Petitioner challenges El Dorado County convictions and for injuring a spouse, false imprisonment, criminal threats, cruelty to a child, and assault entered March 12, 2020. On April 27, 2020, petitioner was sentenced to a total of nine years in prison. ECF No. 17-1.

Respondent moves for dismissal. The exhaustion of state court remedies is a prerequisite to the granting of a petition for writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider all claims before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971).

¹ Warden Edward Borla is substituted as the respondent in this action pursuant to Rule 2(a) of the Rules Governing Section 2254 Cases.

1 The only claim presented by petitioner to the California Supreme Court concerns the
2 imposition of consecutive sentences, ECF No. 17-3, a claim not presented here. Because
3 petitioner has not exhausted state court remedies with respect to any of the claims presented in his
4 amended petition and fails to point to anything which might excuse his failure to present his
5 claims to the California Supreme Court, his amended petition should be dismissed without
6 prejudice.²

7 Good cause appearing, IT IS HEREBY RECOMMENDED that:

8 1. Respondent's motion to dismiss (ECF No. 16) be granted;

9 2. Petitioner's amended petition for a writ of habeas corpus be dismissed for failure to
10 exhaust state remedies.

11 3. This case be closed.

12 These findings and recommendations are submitted to the United States District Judge
13 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
14 after being served with these findings and recommendations, any party may file written
15 objections with the court and serve a copy on all parties. Such a document should be captioned
16 "Objections to Magistrate Judge's Findings and Recommendations." In his objections petitioner
17 may address whether a certificate of appealability should issue in the event he files an appeal of
18 the judgment in this case. See Rule 11, Federal Rules Governing Section 2254 Cases (the district
19 court must issue or deny a certificate of appealability when it enters a final order adverse to the
20 applicant). Where, as here, a habeas petition is dismissed on procedural grounds, a certificate of
21 appealability "should issue if the prisoner can show: (1) 'that jurists of reason would find it
22 debatable whether the district court was correct in its procedural ruling;' and (2) 'that jurists of
23 reason would find it debatable whether the petition states a valid claim of the denial of a
24 constitutional right.'" Morris v. Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v.

25 ² Petitioner is cautioned that the habeas corpus statute imposes a one-year statute of limitations
26 for filing non-capital habeas corpus petitions in federal court. In most cases, the one-year period
27 will start to run on the date on which the state court judgment became final by the conclusion of
28 direct review or the expiration of time for seeking direct review, although the statute of
limitations is tolled while a properly filed application for state post-conviction or other collateral
review is pending. 28 U.S.C. § 2244(d).

1 McDaniel, 529 U.S. 473, 484 (2000)). Any response to the objections shall be served and filed
2 within fourteen days after service of the objections. The parties are advised that failure to file
3 objections within the specified time may waive the right to appeal the District Court's order.

4 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 Dated: April 30, 2024



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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